

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:

PAUL A. BERVID,

Complainant,

and

RICHARD DEVINE, in his Official Capacity
as COOK COUNTY STATE'S ATTORNEY,
OFFICE OF THE STATE'S ATTORNEY
OF COOK COUNTY and the COUNTY OF
COOK, STATE OF ILLINOIS,

Respondent.

Charge No. 2008CA0128
EEOC No. 21BA72181
ALS No. 08-0366

ORDER

This matter coming before the Commission pursuant to a Recommended Order and Decision, the Complainant's Exceptions filed thereto, and the Respondent's Response to the Complainant's Exceptions.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

IT IS HEREBY ORDERED:

1. Pursuant to 775 ILCS 5/8A-103(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on **June 16, 2009**, has become the Order of the Commission.

STATE OF ILLINOIS)

HUMAN RIGHTS COMMISSION)

Entered this 13th day of January 2010

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Yonnie Stroger

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)		
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PAUL A. BERVID,)		
)	Charge No.	2008CA0128
Complainant,)	EEOC No.	21BA72181
)	ALS No.	08-0366
and)		
)		
RICHARD DEVINE, in his Official)		
Capacity as COOK COUNTY)		
STATE'S ATTORNEY, OFFICE OF)		
THE STATE'S ATTORNEY OF)		
COOK COUNTY and the COUNTY)		
OF COOK, STATE OF ILLINOIS,)		
)	Judge Reva S. Bauch	
Respondents.)		

RECOMMENDED ORDER AND DECISION

This matter comes before me on Respondent's Motion to Dismiss for Lack of Jurisdiction (the "Motion to Dismiss"). Complainant filed a Response to the Motion to Dismiss. Respondent filed its Reply. Thereafter, Complainant filed a Sur-reply. Accordingly, this matter is now ready for disposition.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

Findings of Fact

The following findings of fact were derived from the record file in this case:

1. On or about July 26, 2007, Complainant filed a charge of discrimination with the Department.

2. On June 30, 2008, the Department issued a Notice of Dismissal of Complainant's Charge for Lack of Substantial Evidence (the "Notice of Dismissal").
3. The Notice of Dismissal had a Request for Review filing deadline date of August 4, 2008.
4. On August 22, 2008, Complainant filed a Request for Review.
5. Also on August 22, 2008, Complainant filed the present Complaint with the Commission.
6. On August 28, 2008, the Department's Chief Legal Counsel denied Complainant's Request for Review as untimely and ruled the investigation of the charge was final.
7. On December 12, 2008, Respondent filed its Motion to Dismiss with the Commission.
8. On January 9, 2009, Complainant filed a Response to the Motion to Dismiss.
9. On January 23, 2009, Respondent filed a Reply.
10. On February 27, 2009, Complainant filed a Sur-reply.

Conclusions of Law

1. Complainant is an "aggrieved party" and Respondents are "employers" as those terms are defined in the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B).
2. The Commission has no jurisdiction over the parties and the subject matter of this action.

Discussion

The Commission cannot legally review or adjudicate Complainant's claims, which were previously filed with the Department and dismissed for lack of substantial evidence. Complainant lost his right to file his own complaint with the Commission when the

Department entered its Notice of Dismissal. **See Wallace v. Human Rights Comm'n, 261 Ill App3d 564 (1994).** In Wallace, the Illinois Appellate Court held that the Commission properly ruled that the complainant lost her right to file a complaint once the Department dismissed her charge. In addition, the Court held once the Department dismissed the charge, the complainant's exclusive remedy was review of the Department's decision. **Id.** Likewise, Complainant's sole remedy in this case was to seek review of the Department's Notice of Dismissal. Apparently, Complainant's Request for Review was untimely and the Department issued a Notice of Untimely Request for Review on August 28, 2008.

In sum, Complainant's Complaint is not properly before the Commission and must be dismissed. The Commission has no jurisdiction.

Recommendation

It is recommended the Commission dismiss this action, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: June 16, 2009